

Remarks

In the non-final Office Action dated March 20, 2008, the following rejection is present: claims 1, 5 and 10 stand rejected under U.S.C. § 103(a) over Paratore (U.S. Patent No. 6,294,997); and claim 4 stands rejected under U.S.C. § 103(a) over Paratore in view of Heinrich (U.S. Patent No. 6,404,325). Claim 1 is objected to due to informalities, and claims 2-3 and 6-9 are objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form.

Applicant respectfully traverses the § 103(a) rejections of claims 1, 4-5 and 10 (each of which is based on the Paratore reference) because the Office Action improperly concludes that aspects of the claimed invention would have been obvious to the skilled artisan. *See, e.g.*, M.P.E.P. § 2142 (“rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”). In this instance, the Office Action acknowledges that Paratore fails to disclose aspects of the claimed invention directed to correcting the disconnection time information based on the effects of the IC material and/or on at least one radiation effect. The Office Action then simply concludes that it would have been obvious to the skilled artisan “to modify the length of time that an RFID tag is exposed to a certain environmental condition to be corrected in dependence on the effects of the IC material or temperature.” However, the Office Action has not cited to any prior art reference to support this assertion. *See, e.g.*, M.P.E.P. § 2144.03 (“It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.”). As such, Applicant requests that the Office Action provide documentary support for the assertion that it would have been obvious to modify the Paratore reference in the proposed manner; without such support, Applicant submits that the rejections are improper and must be withdrawn.

Moreover, the Office Action further improperly concludes that the skilled artisan would have been motivated to modify the Paratore reference in the above discussed manner “in order to provide a more accurate tracking and identifying environmental-sensitive goods.” The Office Action has not provided any evidence from Paratore, or otherwise, that

the proposed modification would allow “more” accurate tracking and identification of environmental-sensitive goods. For example, the cited portions of Paratore teach tracking the time period from a previous charging of an RFID tag and also tracking certain environmental conditions that the RFID tag is exposed to during this time period. *See, e.g.*, Col. 5:11-31. However, Paratore does not teach modifying the tracked time period from a previous charging based on the conditions that the RFID tag was exposed to and Paratore does not teach or suggest that doing so would allow “more” accurate tracking and identification of environmental-sensitive goods. Thus, Applicant requests that the Office Action provide evidence to support the conclusion that the proposed modification would allow “more” accurate tracking and identification of environmental-sensitive goods, since obviousness cannot be sustained with mere conclusory statements as discussed above.

In addition, Applicant submits that the skilled artisan would not have reasonably looked to modify Paratore to address a problem already solved by Paratore. Specifically, the Paratore reference already allows the tracking and identification of environmental-sensitive goods through the use of RFID tags that are equipped with timing and environment modules. *See, e.g.*, Col. 2:9-20 and Col. 5:11-31. As has been held by several recent Board decisions citing the U.S. Supreme Court decision in *KSR Int'l v. Teleflex Inc.*, a skilled artisan having common sense at the time of the invention would not have reasonably looked to modify a reference to solve a problem already addressed by the reference.

In view of the above, the § 103(a) rejections of claims 1, 4-5 and 10 are improper and Applicant requests that they be withdrawn.

Regarding the objection to claim 1 based on the word “determinating”, to facilitate prosecution, Applicant has amended claim 1 to read determining as requested by the Office Action. Thus, Applicant requests that the objected be removed.

Applicant notes that minor amendments have been made to claims 2 and 5-7 to improve readability and in view of § 112(6). For example, Applicant has amended claims 5-7 to replace determination means with determination logic circuitry and to replace correction means with correction logic circuitry. Applicant submits that support for determination logic circuitry can be found, for example, with block 24 of Figure 3 and in Paragraphs 0056-0057, as well as with block 19 of Figure 2 and in Paragraph 0052, and that support for correction logic circuitry can be found, for example, with block 25 of

Figure 3 and in Paragraphs 0056-0057. These amendments are not being made to overcome any rejection raised by the Office Action, which fail for at least the reasons discussed above.

In view of the remarks above, Applicant believes that each of the rejections/objections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, Peter Zawilski, of NXP Corporation at (408) 474-9063.

Please direct all correspondence to:

Corporate Patent Counsel
NXP Intellectual Property & Standards
1109 McKay Drive; Mail Stop SJ41
San Jose, CA 95131
CUSTOMER NO. 65913

By: 

Name: Robert J. Crawford

Reg. No.: 32,122

(NXPS.516PA)